



CONTRACT TEACHERS IN INDIA: AN OVERVIEW

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In ancient times, as revealed by great Epics like Ramayana and Mahabharata, teachers occupied a predominant role in the man making process. The teacher was given the top-most position in the hierarchy and was paid the highest reverence by all people including the rulers. The society looked upon the 'Acharya' for his valuable suggestions and guidance. Shikshaballi in the Thaittiriopanishad, depicts teacher as, Acharya Purvarupam, Antevasy Uttararupam, Vidya Sandhi, Pravachanas Sandhanam, Ity Adhivid�am". (Thaittiriopanishad 1.4.1) The teacher is the prior form. The pupil is the later form, Knowledge is their junction, and Instruction is the connection. In Vedas also, teacher qualities are described. In Atharva Veda, teacher is compared to Yama, the propagator of Dharma, to Varuna, the propagator against sins and to moon, giver of light and happiness. Shastra made it clear that wrong teaching is a crime. Teaching in the modern era is a challenging profession that requires good subject knowledge, good questioning skills, an emphasis upon instruction, clear objectives, good time management, effective planning, good classroom organisation, effective use of human resources, good interaction, effective communication skills, attitudes, perceptions, interests, etc.

Public employment in a sovereign socialist secular democratic republic has to be as set down by the Constitution and the laws made there under. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. A sovereign government, considering the economic situation of the country and the work to be done, is not precluded from making temporary appointments or engaging workers on daily wages. So the rule for the public appointment is that regular appointments are to be made as a rule and contractual or temporary appointments can be made only in exceptional circumstances. Contractual appointment is made for some specific period or for some specific purpose. Contractual appointment is made without reference to the recruitment rules and by way of a stopgap arrangement for a very short period. As mentioned above, such appointments are precarious in nature. Article 309 of the Constitution of India confers the power to the recruiting authorities to regulate the process of recruitment for the services under the union and of any state. The executive is vested with the power to recruit persons to government services. Creation and abolition of the post is prerogative of the executive. Normally the appointments to the government services are made through a prescribed agency. But the exigencies of administration may sometimes call for making contractual or temporary appointments. The object behind this power is to run smooth administration.

Contract teachers are broad and varied category. Many different types of teachers fall under the label of "Contract Teachers" including 'temporary', 'guest faculty', 'ad hoc', 'volunteers', 'Para teachers' and the like. However, their salaries and working conditions are far less than the regular civil service teachers. Typically they are hired for one year or less at a salary half or less than that of a regular teacher. The contract teachers' appointments have become the norm in many states in India. However, since their salaries do not form part of payroll, there are no official statistics. This trend

has been supported by the Central Government policies and documents of late 1990's such as National Committee of State Education Commissions, National commission on Teachers etc. and the like.

Teacher shortages are a problem worldwide, as the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART). In the Anglo-American world, academic staff is facing unprecedented challenges. Working conditions and salaries have experienced a long-term deterioration. There have been sweeping changes in the nature of appointments, with an explosion in the number of non-tenured and part-time positions. The funding and management of higher education institutions is being dramatically reformed, resulting in increased commercialization and tightening bureaucratic control. In the process, the academic profession is being transformed. More and more faculty today have less professional autonomy, less secure employment, and less academic freedom.

In U.S.A. almost three-quarters of the people employed today to teach undergraduate courses in the nation's colleges and universities are not full-time permanent professors but, rather, are instructors employed on limited-term contracts to teach anything from one course to a full course load. These instructors, most of whom work on a part-time/adjunct basis, now teach the majority of undergraduate courses in U.S. public colleges and universities. Altogether, part-time/adjunct faculty members account for 47 percent of all faculties, not including graduate employees. The percentage is even higher in community colleges, with part-time/adjunct faculty representing nearly 70 percent of the instructional workforce in those institutions. Most part-time/adjunct faculty members are not newcomers to their positions—more than 40 percent have been on their campuses 11 years or more.

Many contract and ad hoc teachers in India also find the current system as arbitrary and unfair. They have also filed their suits to the courts for the regularization of their jobs. They pleaded that their contracts are being terminated unfairly. These teachers do not have any legislative protections as are being given to the regular employees. They do similar work as regular teachers but they are retained on contracts that are for limited duration which can be easily terminated and they get less pay and do not have any service benefits as compared to regular teachers.

The contract teachers have demanded regularization of their services and upgradation of their pay many times. They have also sought benefits of regularization such as some job security and recognition of their work etc. they have many a times knocked at the doors of Supreme Court of India for their rights and there is abundance of cases in the courts concerning contract teachers and their regularization. Even many educational projects relied heavily on the use of Contract Teachers. The decentralisation movement of early 1990's also allowed the use of contract teachers. The final nail in the coffin were the judgements of Supreme Court in the case of Piara Singh v. State of Haryana in 1992 and Constitutional amendment in 2002 which introduced article 21A guaranteeing

free and compulsory education to all children between the age of six and fourteen years. The courts also now have shown reluctance to decide in favour of contract teachers. In 1980's and 1990's, the bent of the courts was somehow in favour of contract teachers in the light of Article 14 and Article 16. In Rattanlal's case, the Supreme Court observed that the policy of adhocsim was unbecoming of the State which ought to be model employer as it is a form of exploitation of contract teachers. In these years the courts decided the cases in favour of ad hoc/contract teachers, regularised them, and ensured that equal pay should be given for equal work.

In Piara Singh v. State of Haryana, the Supreme Court gave guidelines for regularization of contract employees which are explained below:

The main concern of the courts in such matters is to ensure the Rule of Law and to see that executive acts fairly and gives a fair deal to its employees.

1. A person should not be kept in temporary or ad hoc service for long. If it is so, the court presumes that there is need and warrant for a regular post and accordingly directs regularization.
2. While giving directions, the court must act with due care and caution.
3. The normal rule is the regular appointment through prescribed agency but if some emergency arises the ad hoc or temporary appointments can be made.
4. In such a situation efforts should always be made to replace them by regularly selected employees. But such a temporary or ad hoc employee may also compete with others for such regular appointment.
5. An ad hoc or temporary employee should not be replaced by other ad hoc or temporary employee; he can only be replaced by a regularly selected employee as it is expedient to avoid arbitrary action on the part of appointing agency.
6. The state must act as a model employer. The state should not exploit its employees nor should it seek to take advantage of the helplessness and misery of the unemployed persons. Equal pay must be given for equal work, which is indeed one of the directive principles of state policy under the constitution.
7. When a person enters a temporary appointment or gets engagement as a contractual or casual worker and the engagement is not based on the proper selection as recognised by the relevant rules and procedure, he is aware of the consequences of appointment being temporary, contract or casual in nature, such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. Therefore theory of legitimate expectation cannot be successfully advanced by temporary, casual or contractual employees. The theory cannot be invoked to seek positive relief of being made permanent in the post.

But this decision of the Apex Court was overruled in the case of State of Karnataka v. Uma Devi in 2006 where the Court ruled that the practice of contract employment and the regularization is a backdoor entry to the public employment and affects the employment opportunities of the public. The rights of contract employees are subordinated to the rights of public applying for the regularised post. The Doctrine of legitimate expectation does not apply to the contract employees as there is never a stipulation in their contract as to their regularization. The Court in Uma Devi ordered the end to judge ordered regularization, arguing it was back-door regularization and unfair to other potential applicants to these positions. Further, it claimed it promoted nepotism and inefficiency. After 2006, in contract teacher cases the judiciary would fre-

quently cite Uma Devi when denying regularization. By the 2000s the Court rarely discussed the role of the state as a "model employer", or what was "fair" for teachers, and instead often commented that teachers should have known what to expect when they signed their contract.

Economic benefits, job security and freedom of work are generally perceived as necessary conditions for improvement in the social status of teachers. However, increase in material benefits is not sufficient. Cultivation of professional competence, capacity to inspire and motivate students, devotion to, duty, good scholarship and academic record, and quest for knowledge and excellence are all equally significant. Unless the level of professional competence does not rise along with betterment of material conditions, the status of teachers will not improve. Pursuit of excellence and establishment of reputation as a teacher go a long way in giving high status to teachers even if material benefits are not at par with other professions.

As previously discussed, in Piara Singh the Supreme Court found regular appointments should be the norm for public employees and laid out ground rules for regularizing ad hoc employees. A judgment like Piara Singh, which has been largely abandoned, was designed to keep the government more accountable. At the same time though, it was also deferential, noting that the role of courts is to question the "validity" and not the "wisdom" of executive actions. It laid out a framework for the application of constitutional principles to contract labour, noting that these principles were not "immutable," and encouraged an executive-judicial dialogue. Perhaps the time has come for the courts to return to the Piara Singh approach, or a contemporary analogue. Such an approach is especially relevant for the case of contract teachers, where courts are faced with uncertainty about how to best protect both labour and educational rights. It is not immediately clear if a teacher's labour rights are better protected in a system where her job is secure for life and she receives a liveable salary or in a system where her job is on contract, she is awarded comparable or higher salaries to regular teachers, and dismissal is based on well-reasoned criteria with adequate notice. Similarly, the evidence is not clear whether contract or regular teachers are better at teaching students. It is difficult for anyone, including the Court, to make an absolutist case that labour or educational rights can only be fulfilled through one type of policy. What is clear is that a system where contract teachers have a low salary and are arbitrarily dismissed or regularized is not only unfair and exploitative to the teachers, but also decreases their effectiveness and infringes the educational rights of students. In other words, the Court can still clearly say when rights are being violated, even if multiple prescriptions to remedy this violation are possible.

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